

Remarks/Arguments**I. Status of the Claims**

In the “Notice of Allowability” mailed along with the “Notice of Allowance and Fee(s) Due” dated December 30, 2010, the Examiner indicates that claims 1-7 and 11-18 are allowed. The “Examiner’s Amendment” attached to the “Notice of Allowability” amends claim 11 and states, “Authorization for this examiner’s amendment was given in a telephone interview with Matthew Bussan (Reg. No. 33,614) on 12/17/2010.” While the undersigned gave his authorization for the Examiner to amend claim 11 via an Examiner’s Amendment, the change in the Examiner’s Amendment was not what the undersigned agreed to.

In the “Examiner-Initiated Interview Summary” also attached to the “Notice of Allowability”, the Examiner states, “Applicant approved an amendment to claim 11 to avoid a rejection under 35 U.S.C. 101.” This is correct, but the amendment approved by the undersigned is not what appears in the Examiner’s Amendment.

In the telephone interview between the Examiner and the undersigned on December 17, 2010, the Examiner expressed his position that claim 11 was unpatentable under 35 U.S.C. 101 because it is interpretable as a transitory “signal” claim. To avoid a rejection under 35 U.S.C. 101, the Examiner suggested amending claim 11 via Examiner’s Amendment to insert the new phrase “non-transitory” before the existing phrase “computer-readable”. The undersigned understood the Examiner was referring to inserting the new phrase “non-transitory” before the second instance of “computer-readable” (i.e., non-transitory computer-readable medium) in line 1 of claim 11. This would preclude the “computer-readable medium” (on which the “computer-readable program” is stored) from being transitory (e.g. a transmission medium) – a program stored on a transitory medium is unpatentable under 35 U.S.C. 101.

Unfortunately, in the Examiner's Amendment, the Examiner inserted the new phrase "non-transitory" before the first instance of "computer-readable" (i.e., non-transitory computer-readable program) in line 1 of claim 11. The Applicant respectfully submits that this insertion point is erroneous. The distinction between a non-transitory medium and a transitory medium is clear, but the distinction between a non-transitory program and a transitory program is not so clear. The resulting wording is not only odd, it also fails to address (directly, at least) the transitory medium prohibition under 35 U.S.C. 101. The resulting wording is also inconsistent with later instances of "computer-readable program" that appear in claim 11 and each of dependent claims 12-17.

II. Entry of this Amendment under 37 CFR 1.312 is Respectfully Requested

This Amendment is submitted before payment of the Issue Fee and, hence, is in conformance with the requirements of 37 CFR 1.312.

Applicant respectfully requests that the Examiner enter this Amendment under 37 CFR 1.312 prior to issuance.

MPEP 714.16 clearly states:

After the Notice of Allowance has been mailed, the application is technically no longer under the jurisdiction of the primary examiner. He or she can, however, make examiner's amendments (see MPEP §1302.04) and has authority to enter amendments submitted after Notice of Allowance of an application which embody merely the correction of formal matters in the specification or drawing, or formal matters in a claim without changing the scope thereof, or the cancellation of claims from the application, without forwarding to the supervisory patent examiner for approval.

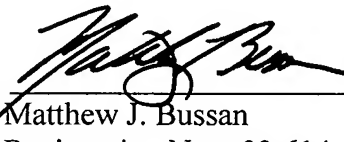
Applicant respectfully submits that this Amendment merely embodies the correction of a formal matter (i.e., an insertion point error) in a claim without changing the scope thereof.

III. Conclusion

In view of the foregoing comments, Applicant respectfully requests entry of this Amendment prior to issuance.

If a conference would be of value in expediting this matter, the Examiner is hereby encouraged to telephone the undersigned counsel at (847) 462-1937 to arrange for such a conference.

Respectfully submitted,

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